

# FLOODING ALONG SWEENEY CREEK

## 2002-2003 Grand Jury Report

### I. Reason for Investigation

The Grand Jury investigated the current status of flood control in the Sweeney Creek area in northern Allendale. The 2001-2002 Grand Jury conducted a countywide flood control investigation that identified unresolved issues in the county and specifically in the Sweeney Creek watershed. A more comprehensive investigation for flood control in the entire County will be reported separately but the unique problems faced by the residents near Sweeney Creek validate the immediate need for this separate report.

### II. Procedure

The Grand Jury:

- Reviewed 2001-2002 Grand Jury Report and agency responses on Solano County flooding problems
- Interviewed General Manager, Solano County Water Agency (SCWA)
- Interviewed two members of the SCWA Board of Directors
- Interviewed President, Solano County Resource Conservation District
- Interviewed member of the Flood Control Advisory Committee to the SCWA
- Interviewed conservation officer of the Natural Resource Conservation Service
- Interviewed official of the California Department of Fish and Game
- Attended SCWA Board of Directors meeting
- Reviewed County Recorder records of Sweeney Creek properties
- Conducted group meeting of 22 residents of Sweeney Creek area
- Reviewed SCWA standard easement forms
- Reviewed legal requirements with a public agency lawyer
- Visited Sweeney Creek area during the dry season and during the December 2002 flooding

### III. Background

1. Sweeney Creek flows from the hills west of English Hills easterly to Interstate 505 at a point between Allendale and Midway roads and continues east and southeast to Ulatis Creek. Flooding has increased in frequency and severity in several areas. Collective landowner memory stated that the areas have flooded six times in 28 years but three of those incidents are within the past eight years. The December 2002 storms caused considerable damage to properties, particularly near Timm Road and directly west of Interstate 505,

and reached the highest flood level in 28 years. Many residents, who must provide their own water supply from wells, suffered from contaminated water, caused by the surface flow, with related expenses and inconveniences until the wells could be cleaned and purified. The problem area is well identified in the County Master Flood Control Plan that was completed in 1998.

2. Two unique circumstances exacerbate the flooding potential near the Sweeney Creek area between Putah South Canal and the Interstate. Long-term residents testified that the Creek was formerly an open creek, dry throughout each summer, with only grass growing on the creek banks. Winter water flows were generally unimpeded. The Solano Irrigation District (SID) under contract from SCWA has used Sweeney Creek for the transport of water from the Putah South Canal east to the Main Prairie District since the early 1960s. The continuous flow of water, augmented by irrigation overflow rich in fertilizer from further upstream, has now developed heavy vegetation, including a top cover of large trees, on the creek banks. Testimony to the Grand Jury by the landowners stated that the County, until 1988, provided maintenance service to ensure unimpeded flows through the rainy season and to control erosion including riprapping (i. e., stabilizing the banks) when appropriate. The amount of maintenance provided, however, reduced in scope during the late 1970s and 1980s. The second unique circumstance is that about half of the landowners in the 1950s granted easements to the US Bureau of Reclamation which stated, "its successors and assigns, the right, privilege, and easement to . . . use the channel of Sweeney Creek for the flow of water, to alter and improve said channel . . . for the prevention of erosion . . ." A records search by the Grand Jury found no similar easements for the other properties. The County had, prior to 1988, performed clearing maintenance whether or not an easement had been granted by the landowner. The SCWA, since inception in 1988, has not performed creek maintenance, other than a one-time limited cleaning of debris in the mid 1990's, for the expressed reason that all landowners have not granted easements.

3. The current situation is that the uncontrolled growth of vegetation has grossly changed the character of this portion of Sweeney Creek. The restriction of high water flows caused by increased vegetation has, according to long-term residents, raised the creek bed (sediment level) under the bridge at Hartley Road approximately two feet. The December 16, 2002 flood backed onto upstream properties higher than any flood level previously seen by long-term residents. Lack of maintenance in recent years has eroded some portions of the bank to the degree that one resident in the area without easements has lost use of 15 feet of land. Contrary to the statement made by SCWA in the response to last year's Grand Jury report that, "Initial vegetation removal in the channel has already taken place but no further work such as excavation or slope protection was done pending a master management plan . . .," all of the residents interviewed by the Grand Jury denied that SCWA has performed any maintenance other than removing a few fallen trees and one Volkswagen. Investigation found that the County Department of Transportation has responsibility for evaluating and correcting conditions under and around the Hartley Bridge.

4. SCWA states that they would like to clear the growth from the Creek but cite several reasons for not doing so.

- a. SCWA stated that the landowners will not sign easements to give SCWA contractors legal access to the Creek. It can be noted that the upper half of this portion of the Creek have easements granted but likewise have not received maintenance other than minor clearing activity since 1988. The landowners strongly insisted to the Grand Jury that SCWA is welcome onto their land for creek maintenance with or without easements, but the perpetual easements presented by SCWA for landowners signature are too broad in scope.
- b. SCWA stated that Fish and Game maintenance permits are very difficult to obtain. A SCWA Board member stated that by the time a permit is processed the season is past (creek work is preferred in September-October when conditions are driest). However, Fish and Game Department officials say their rules are that a permit must be processed within 30

days or it is automatically approved. Furthermore, the Fish and Game Department encourages a five-year permit request by charging the same approval fee for a complete five-year maintenance program as for a single action.

- c. SCWA stated that environmental restrictions hampered maintenance. However, a 1997 environmental study of the area for endangered species found only two elderberry bushes and no other endangered plant or animal. Interviews with Fish and Game Department officials indicated that Sweeney Creek presents no special environmental problems.

5. The SCWA general manager emphasized that they are very willing to assume responsibility for maintenance of this portion of Sweeney Creek if all landowners will grant easements. SCWA has maintained that they have continuously tried to get the landowners to grant the easements. Every landowner who has testified before the Grand Jury has said that they would grant an easement but not with the conditions SCWA has attached. One landowner testified that he independently negotiated with SCWA for a year, with legal fees totaling \$1200, and signed a mutually agreeable easement. This agreement was returned unsigned by SCWA over one year later with the explanation that because other neighbors would not sign easements the (clearing) project would not move forward. This property is downstream of all those neighbors and connects to the Ulatis Project portion of the Creek which is maintained by SCWA.

6. The easement required by SCWA has the expected grants (provisions) to construct, widen, and deepen channels, etc., and to the maintenance and inspection of the channels. The SCWA easement form also includes other grants that are less easily understood.

- a. Example. A grant states " . . not limited to, the location, construction, and maintenance of roads, fencing and/or gates. . ." The word "road" suggests a surface condition that would inhibit the landowners use. Maintenance of the creek is done with equipment in a manner such that any suggestion of a prepared surface seems unnecessary for SCWA and restrictive to the landowner. Landowners say that they have been told by SCWA that fences and roads would not be built but the obvious question then is: "Why have this provision in the contract?" Intense distrust of SCWA by area landowners is widespread among the people interviewed by the Grand Jury. They all have stories to explain why they will not sign an agreement with SCWA that has any questionable restriction. Furthermore, the need for grantee access is understood but the need for fencing which would restrict the landowner's use of his own property is not understood, except for a special circumstance such as an entry from a public road.
- b. Example. Another grant states, " . . the flowage of water in, over, upon, and through..... for the purpose of flood control.. and water supply delivery." The transport of water for commercial use, as has been done for forty years, may raise legal issues. Laws of water rights are a separate body of law and recognize a right that permits water to be transported through the Sweeney channel by the SCWA. However, that law does specify the use must be non-injurious. The continuous flow of water has changed the plant life of the creek banks, which has then slowed the flow velocity and caused significant sedimentary deposits in the Creek. Though the SCWA staff states that this change in the creek banks has not intensified flooding, the restricted flow, as proven by the sedimentary deposits, and the increasing frequency of flooding strongly challenges that position.
- c. Example. Another grant reserves the " . . grantee's free use of . . . easments ." To respect the landowners' right to use their property, when not in conflict with SCWA maintenance needs, prior notification is a reasonable expectation. Since maintenance is

normally a planned event this should not be a problem for SCWA to include in the easement.

- d. Example. Another grant states “. . . shall not be assigned without prior consent without the prior consent of the other party.” The restriction on assignments is puzzling. The SCWA staff agreed that this provision could be rewritten and clarified.
- e. Example. Another grant states “. . . Grantee is not and shall not be liable for injuries to, or death of persons, or damage to, or destruction of, property arising out of Grantee’s use of the easements . . .” A release of liability is to be expected but this release seems excessive and in need of some protection for the landowner. The SCWA staff agreed that this provision could be rewritten and clarified.

7. The SCWA staff, in testimony to the Grand Jury, stated that they had internally discussed these disputed grant restrictions in 1999 and agreed to remove or change them. In November 1999 the SCWA staff, by written memo to the Board of Directors:

- a. Recognized that an ongoing maintenance in that part of Sweeney Creek would at least reduce the flooding,
- b. Compared the rejected Sweeney Creek easements to those granted in Green Valley and Ulati Flood Control Projects by saying they were all non-exclusive (but the SCWA form still has an exclusive limitation),
- c. Recognized that unique aspects require flexibility in the preparation of each landowner's easement, and
- d. Stated that exceptions would be made to the general conditions such as an agreement to construct no roads or fences without landowner's request, work around permanent structures, etc

8. Those decisions have not been put into practice. SCWA's starting point in approaching a landowner is the standard form. Complaints are common among landowners that SCWA staff refuses to negotiate written changes to the easement form. The most recent incident occurred in January 2003.

9. SCWA has recognized the need, and is willing, to assume responsibility for all maintenance of Sweeney Creek between the Putah Canal and the beginning of the Ulati Project below Interstate 505 after easements are granted. The reasons given are the increased vegetative growth and because, through existing easements, they already have legal responsibility for maintenance of the Creek both above and below the contested area.

#### IV. Findings and Recommendations

*Each finding is referenced to the background paragraph number.*

**Finding #1:** Residents adjacent to Sweeney Creek in northern Solano County have experienced flooding with increased frequency and severity. Flooding occurred six times in 28 years and three times in the most recent eight years. The December 2002 flood reached the highest level of flooding in 28 years. (1)

**Finding #2:** Summertime water flow through the Creek, which did not occur prior to operation of SCWA and its predecessor delivering water through the creek (approximately 1960), has changed the vegetation cover near Sweeney Creek from grassy banks to heavy growth of trees, shrubs, and grass. (2)

**Finding #3:** Sediment deposits from impeded water movement in high flow situations has decreased the channel depth significantly and by at least two feet under the Hartley Road Bridge, further impeding flow. (3,6)

**Finding #4:** Clearing and preventative Creek maintenance were performed by the Solano County Department of Transportation prior to 1988, albeit at a reduced scope after 1970. (2)

**Finding #5:** The SCWA, which has optional authority for County flood control measures and is willing to provide ongoing maintenance, has elected not to maintain Sweeney Creek because appropriate easements have not been granted by all landowners. (2, 3, 9)

**Finding #6:** The easements required by SCWA of the landowners specify grants of more rights than are necessary for SCWA to maintain the Creek for unimpeded flow. (6)

**Finding #7:** Intense distrust of SCWA officials by area landowners is widespread among the Sweeney Creek people interviewed by the Grand Jury. (5, 6)

## **Recommendation**

Landowners grant easements to SCWA to allow appropriate maintenance of Sweeney Creek by the following procedure.

- a. Landowners select a spokesperson
- b. Spokesperson and SCWA mutually agree on an outside third party negotiator.
- c. SCWA, each individual landowner and the negotiator reach agreement on the appropriate easements.

## **V. Comments**

All parties recognize that the solution is the need to have a common maintenance program for Sweeney Creek and the crux of the problem is the failure to get the easements signed. SCWA says that the landowners refuse to sign easements but the landowners say they are ready anytime to sign appropriate easements and let SCWA enter their property for Creek maintenance. The Grand Jury understands why few people would sign the easements offered. These easements are perpetual and there are strong reasons to not sign away ownership rights other than what is needed by SCWA to perform a good maintenance program. The Grand Jury believes that, if both sides cooperate as they said they would, a negotiator could obtain all easements promptly so that SCWA can obtain the necessary permits and, at a minimum, start clearing the Creek in the fall of 2003.

Individual landowner responsibility for maintaining banks of Sweeney Creek has not been found of great interest to parties on either side of this issue. The Grand Jury can only speculate about the reasons for these attitudes. California law is, perhaps, not as forthright as some other states about this landowner responsibility. The practice of the County to provide maintenance (prior to the strong increase in liability issues and in environmental impact laws) may have created an unrealistic landowner expectation of governmental support. These same environmental impact laws, as noted in landowners' testimony, create a widespread feeling of being unable to do any helpful work without risking legal opposition. Contrary to outside allegations, the Grand Jury saw no significant evidence of landowners' "dumping" on the creek banks.

Neither was there any evidence seen or heard of concerted landowner efforts to open the stream banks and reduce the flooding that they all experienced.

Several alternatives to this impasse, heard by the Grand Jury, are available to SCWA but all are far less desirable than negotiated individual easements.

- a. Purchase the easement for a monetary consideration over and above the reasonable consideration of maintaining the Creek.
- b. Purchase the portion of land encompassing the Creek adequate in size for maintenance requirements.
- c. Reroute all irrigation water to bypass Sweeney Creek (this would neither reduce the flooding potential nor relieve SCWA of obligations under the easements previously assumed).
- d. Condemnation by eminent domain (a policy strongly disfavored by SCWA Board and Staff).
- e. Abandon all maintenance in the contested area (this would significantly limit maintenance in the upstream area where easements exist to avoid downstream impacts).

#### Affected Agency

- Solano County Water Agency
-